

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TODD CARTER and JULIE CARTER,
individually and as next friends of
ETHAN CARTER, a Minor Claimant
Plaintiffs,

v.

**COSTCO WHOLESALE
CORPORATION**
Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

DEFENDANT’S NOTICE OF REMOVAL

Defendant, Costco Wholesale Corporation (“Costco”), files this Notice of Removal under 28 U.S.C. §§ 1441, 1446, and 1332, and respectfully shows the Court the following:

**I.
Introduction**

1.1 On September 22, 2020, Plaintiffs Todd Carter and Julie Carter, individually and as next friends of Ethan Carter, a Minor Claimant, filed a personal injury lawsuit against Costco in the 26th Judicial District Court of Williamson County, Texas, under Cause No. 20-1478-C26. *Plaintiffs’ Original Petition, Ex. I.* Plaintiffs allege that Ethan Carter, a minor, suffered injuries when he slipped on water and struck his face and chin on the corner of a nearby bench at the Costco warehouse located at 4601 183A Toll Road, Cedar Park, Texas 78613. *See id.* at § V. As a result of their claimed injuries, Plaintiffs seek to recover damages for: past and future healthcare expenses; past and future physical pain and mental anguish; past and future physical impairment; and past and future disfigurement. *Id.*, at § VII.

1.2 Plaintiffs’ state court action is one over which this Court has original jurisdiction under 28 U.S.C. § 1332 and which may be removed to this Court in accordance with 28 U.S.C. § 1441.

This is a civil action in which the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

1.3 Service of Citation of Plaintiffs' Original Petition on Defendant Costco was executed on October 16, 2020. *See Service of Process Transmittal, Ex. 2.* Costco filed its Original Answer in the state court action on November 9, 2020. *See Defendant Costco Wholesale Corporation's Original Answer to Plaintiff's Original Petition, Ex. 3; State Court Docket Sheet, Ex. 4.*

II. The Parties

2.1 Plaintiffs are Texas citizens, who resided in Williamson County, Texas at the time of the events made the basis of his lawsuit. *Plaintiffs' Original Petition*, at ¶ 2.1, *Ex. 1.*

2.2 As Plaintiffs concede in their pleading, Defendant Costco is a Washington Corporation with its principal place of business in the State of Washington. *See id.* at ¶ 2.2; *see also Franchise Tax Account Status, Office of Texas Comptroller, Ex. 5.*

III. Procedural Requirements for Removal

3.1 Removal is timely, as this Notice is filed within 30 days of Costco receiving service of summons and Plaintiffs' Original Petition on October 16, 2020. *See* 28 U.S.C. § 1446(b)(1).

3.2 Written notice of the filing of this Notice of Removal is being given to Plaintiffs and their counsel as required by Texas law. Further, Costco is filing a copy of this Notice with the Clerk of the Court for Williamson County, Texas—where Plaintiff's cause was originally filed. *See Costco's Notice of Filing of Notice of Removal, Ex. 6.*

3.3 Costco has submitted a copy of all processes, pleadings, and orders to this Court as required by 28 U.S.C. § 1446(a).

**IV.
Venue**

4.1 Venue in this district is proper because the Western District of Texas, Austin Division, includes Williamson County. Williamson County is the county where the alleged incident occurred and where the original lawsuit is pending. *Plaintiff's Original Petition*, at ¶ 4.3, **Ex. 1**.

**V.
Jurisdictional Basis for Removal**

5.1 Removal is proper pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00.

5.2 First, complete diversity of citizenship exists between the parties. Plaintiffs represent that they are Texas residents. *Plaintiff's Original Petition*, at ¶ 2.1, **Ex. 1**. Costco is the only named Defendant in this lawsuit. *See id.* at ¶ 2.2. Plaintiffs concede in their Petition that Costco is a “Washington corporation with its principal office located in Issaquah, Washington.” *See id.* As Plaintiffs represent, Costco is a Washington Corporation with its principal place of business in the State of Washington. *Franchise Tax Account Status, Office of Texas Comptroller, Ex. 5*. Costco is therefore deemed a citizen of Washington for diversity purposes. *See* 28 U.S.C. § 1332(c). For these reasons, the parties are completely diverse, and removal is appropriate on this ground.

5.3 Second, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In determining whether the amount in controversy has been met, the general rule is that the sum claimed by the plaintiff controls if the claim is apparently made in good faith. *Okeke v. Auto. Fin. Corp.*, 2016 U.S. Dist. LEXIS 196918, *16, 2016 WL 11582509 (W.D. Dist. Tex. Feb. 3, 2016) (citing *St. Paul Mercury Indemn. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89, 58 S. Ct. 586, 82 L. Ed. 845 (1938)). Here, Plaintiffs represent to the state Court that they seek monetary damages of more

than \$100,000.00 but less than \$200,000.00. *Plaintiff's Original Petition*, at ¶ 7.3, *Ex. I*. As such, the amount in controversy requirement for removal is apparent on the face of Plaintiff's pleading.

**VI.
Jury Demand**

6.1 Costco asserts its rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

**VII.
Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Costco Wholesale Corporation prays that this Notice of Removal be deemed sufficient and that the proceedings attached hereto be removed from the 26th District Court of Williamson County, Texas to the docket of this Honorable Court.

Respectfully submitted,

/s/ *Robert A. Valadez*

By: _____

ROBERT A. VALADEZ
State Bar No. 20421845
rvaladez@shelton-valadez.com

SHELTON & VALADEZ, P.C.
600 Navarro, Suite 500
San Antonio, Texas 78205-1860
Ph: (210) 349-0515
Fx: (210) 349-3666

**ATTORNEY FOR DEFENDANT,
COSTCO WHOLESALE CORPORATION**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was forwarded in accordance with the Federal Rules of Civil Procedure on the 16th day of November 2020, to:

VIA E-MAIL AND E-SERVICE

Mark R. McLean
McLean Law PC
408 W. 11th St., Ste. 500
Austin, Texas 78701
mrm@mlpcfirm.com

/s/ Robert A. Valadez

ROBERT A. VALADEZ